

Comments from the State of California on the Preliminary Report of the U.S. Commission on Ocean Policy June 4, 2004

General Observations

We appreciate the challenges that the U.S. Commission on Ocean Policy has faced over the past two and one half years to prepare this report. Through 15 public meetings, and numerous other forums you have identified the complexities of addressing ocean and coastal issues at the federal level with management from 15 departments and agencies, oversight by 60 congressional committees, and compliance with the provisions of 144 statutes. The fragmentation, duplication and inefficiency created by the current management regime played a major role in the development of almost 200 recommendations included in the Preliminary Report.

There is also a growing recognition of the critical role of non-governmental entities such as academia, industry, and public interest groups to assist in ocean and coastal management. On May 6 the California Resources Agency and California Environmental Protection Agency convened the California Ocean Summit to ask representatives from these “non-governmental interests” to provide us with their expert advice on your Preliminary Report. In addition, these two agencies requested comments from state departments, boards, commissions and conservancies, as well as any other organization or member of the public that wished to provide comments. The testimony and comments received have been used to help formulate California's comments and have confirmed the need for a call for action at both the national and state levels for improving the management and protection of ocean and coastal resources.

Ocean and Coastal Governance

Improvements in Coordination are Critically Needed. The Preliminary Report provides clear findings regarding the fragmentation, duplication and confusion that is present in the federal system of ocean and coastal governance. We concur with these findings and with recommendations to establish a National Ocean Council, to appoint an assistant to the President to chair the council, and to establish a Presidential Council of Advisors on Ocean Policy. We would urge that the Commission also recommend the enactment of a national ocean policy act to provide a statement of U.S. ocean policy and clear and measurable management goals. We also believe that coastal states should have representation on both the Ocean Council and on the Presidential Council of Advisors on Ocean Policy that are recommended to be established because of our critical role in ocean and coastal management.

We concur with the need to address regional issues through a system of regional councils, but recommend that these councils be guided and supported by the provisions of the new national legislation and resulting budgetary processes. We believe you should consider recommending that these councils be established by statute if accompanied by sufficient flexibility in their design and implementation and with sufficient funding to help address the unique needs of each region. In the meantime, the Commission should recommend that the federal government

provide incentives to encourage initial regional meetings to identify needs and working relationships within regions under consideration.

Clarify the Roles of Federal Agencies. We believe that the improvements recommended for coordinating federal agency processes (establishment of the council, advisor, and advisory council) are critical for making sense out of the current assets available for management. However, we also support the need to improve many of the functions of agencies currently charged with implementing these duties. Specifically, we support the need to clarify the role and functions of the National Oceanic and Atmospheric Administration (NOAA). In addition, we support consideration of an “organic act” that would codify the establishment and mission of the organization.

We believe that this evaluation is critically important and long overdue. As noted in the report, federal agencies with major ocean and coastal responsibilities in addition to NOAA include, among others, the Department of the Interior, U.S. Environmental Protection Agency, National Aeronautical and Space Administration’s Earth Science Enterprise, U.S. Army Corps of Engineers, U.S. Coast Guard, and U.S. Navy. We strongly support the recommended efforts to improve the coordination among these agencies.

Renew Commitment to Coastal Zone Management. The Coastal Zone Management Act (CZMA) has provided the backbone of coastal protection and management in this nation for over 30 years. The federal consistency provisions of the act allow California, and other coastal states with certified Coastal Management Programs, to review federal permits for activities such as offshore oil and gas in the Outer Continental Shelf for consistency with the certified program. California also had the first coastal non-point source pollution control program in the nation to be approved under the provisions of both the CZMA and the Clean Water Act. California strongly supports the recommendation for reauthorizing CZMA with the maintenance of the federal consistency provisions and provisions to address coastal non-point source pollution.

U.S. Leadership in International Law. The Preliminary Report addresses key issues at the international level and it documents the historic leadership that the United States has demonstrated in this area. However, the United States’ influence has been lessened by the reluctance to ratify the Law of the Sea Convention, which has been referred to as a “constitution for the ocean.” Because we have yet to ratify this convention, international law is being made in the Law of the Sea Tribunal, in the Seabed Authority, and in the Continental Shelf Commission – all without the participation of the U.S. which has significant ramifications for international developments in fisheries, mineral extraction and other issues of importance. Ratification can bring the U.S. back into this arena, and we support the recommendation that the Law of the Sea Convention be ratified by the U.S.

International Trade Agreements. The report does not address the potential effect of international trade agreements on coastal and ocean management and protection policies. The final report should evaluate the potential, if any, for transnational companies to challenge certain ocean management policies and practices based on claims that such policies create trade barriers or could have an adverse effect on investment expectations.

Economic Assessment and Funding

Need for a National Ocean Economic Accounting System. There is no national accounting system in place in the United States to regularly assess the economic benefits derived from the ocean and coast. Other sectors of the economy, such as agriculture, have economic accounting systems that annually report on the economic value and benefit from these industries. Such information is important, in that it informs decision makers about the need for, and benefits of, investment in management and infrastructure to support these economic benefits.

We agree with, and applaud, the conclusions of the Commission making a clear linkage between healthy oceans and a healthy economy. A study by the California Research Bureau came to this conclusion years ago, and we are encouraged to see the Preliminary Report acknowledges this important relationship. Although the Preliminary Report recommends the creation of a national accounting system, it is not featured as a major structural change to be made at the national level. We believe that creating such a system should be one of the top priority recommendations in the final report.

Ensure Adequate and Sustainable Funding. The Preliminary Report recognizes the need for increased investment in all aspects of ocean and coastal management. We support the establishment of a National Ocean Policy Trust Fund, including the recommended use of revenues from outer continental shelf (OCS) oil and gas operations, and fees from specified users of ocean and coastal resources. However, we encourage:

- A thorough evaluation of the long term sustainability of any funding sources identified, and
- A clear determination that funding from these sources would not provide incentives for future offshore oil and gas development.

California is opposed to new offshore oil and gas development along its coast, and has prevailed in litigation against the U.S. Department of the Interior regarding California's right and duty to ensure that any re-issuance of oil and gas tracts on the OCS be consistent with the requirements of the National Environmental Policy Act and the Coastal Zone Management Act. California would vigorously oppose any funding process that would provide incentives for new offshore oil and gas development on the OCS.

Research, Education and Technology Development

Strengthen and Support Research, Monitoring and Education. The Preliminary Report makes a compelling case for supporting and strengthening the United States commitment for ocean and coastal research, education programs and technology development. We strongly support the key recommendations to double the federal ocean and coastal research budget, strengthen education programs, and recognize and support key research programs such as the National Sea Grant Program. The Preliminary Report addresses the need for coordinated national water quality monitoring programs and regional research programs that could help inform the efforts of regional management programs. which we believe should be established throughout the United States as recommended.

Research should be the foundation of good public policy, but often it is not. The recommendations contained within this Preliminary Report can go a long way to ensuring that

science plays a stronger role in our decisions about protecting and managing ocean and coastal resources.

Create an Integrated Ocean Observing System. The Preliminary Report recommends that Congress fund the development of an Integrated Ocean Observing System to be guided by a National Ocean Council. This system would be based on a series of regional observing systems (including the California State Coastal Conservancy's Coastal Ocean Currents Monitoring Program), and will become part of a global observing system. California is investing \$21 million to develop the coastal currents monitoring system because it will, among other things, provide critical information for navigation safety, search and rescue operations, oil spill trajectory analysis and cleanup, fisheries management, and the analysis and management of existing or new marine protected areas. We strongly support this recommendation to develop an Integrated Ocean Observing System at the national level and will work closely with the federal government and other partners to integrate California's leadership effort into that system.

Make Research Relevant to Coastal States. Coastal states and local governments are often frustrated that current research programs do not address their priority research needs, research findings are difficult to locate, and the current complexity of NOAA and other agency processes makes it difficult to seek out opportunities to conduct research to meet their management needs. We concur with the principles developed by the Coastal States Organization (CSO) that emphasize the need to support management oriented research that can be used by managers at the regional, state or local level. We also concur with the CSO findings that federal research priorities and dissemination strategies should be developed in consultation with coastal states and other stakeholders. There should be greater emphasis on these issues of state interest and management relevancy in the Commission's final report.

Promote Lifelong Ocean Education. The Preliminary Report acknowledges the need to build national awareness of our oceans and promote lifelong ocean education. The report identifies critical classroom needs, resources and research, higher education and workforce needs. Importantly it recognizes the need and opportunity for a cross disciplinary approach to strengthening science literacy in the nation's classrooms – involving social sciences, as well as natural science. It also recognizes the opportunity for ocean science to be incorporated into national achievement tests, which could promote more focused ocean science instruction in the nation's classrooms. These recommendations are consistent with recent actions in California to enact the Education and the Environment Act that calls on the State Department of Education, the State Board of Education, and the Office of the Secretary of Education together with other state agencies and stakeholders to bring ocean and other environmentally related education into the classrooms of California's K-12 public schools.

The report could be strengthened by also emphasizing the opportunities in educational programs offered outside of the classroom. California and other states are blessed with a variety of programs offered by non-profit or private institutions such as aquariums, educational outreach organizations and other non-governmental programs. These programs are often conducted in collaboration with local, state or federal government management programs that use hands-on education in the field, on the beach, or in the water. This education process can also be used to help address conflicts between recreational users and their impact on the environment. These programs should be more highly encouraged in the final report and should be considered for enhanced collaboration with new or ongoing programs at all levels of government.

Stewardship

Support an Ecosystem Management Approach. The Preliminary Report recommends that ecosystem management be a guiding principle for ocean and coastal management, an approach we applaud and support. California has played a leading role in developing and implementing an ecosystem approach to managing fisheries, water quality, wetlands, shorelines, and other resources. As stated in the Preliminary Report, ecosystem management “looks at all the links among living and nonliving resources, rather than considering single issues in isolation.” In 1997, California led the nation with an ocean strategy which advocated for ocean management that considers the linkages within California’s entire ocean ecosystem, including inland watersheds; bays, estuaries, and coastal lagoons; nearshore ocean waters, and deep ocean waters. All of these areas are biologically connected, and the challenge has been and will continue to be to make our system of governance responsive to these ecological relationships.

California’s approach to fisheries management through the Marine Life Management Act is an example of this approach, where management is based not on a single species but rather on an entire ecosystem. This approach does not simply focus on exploited populations of marine life, but the multiple species and habitats that make up the ecosystem, from inland watersheds to the deep ocean. Similar principles are used in the California Marine Life Protection Act which deals with marine managed and protected areas, the CalFed process which deals with management issues in the San Francisco Bay/Delta region, and the Natural Communities Conservation Planning Program which seeks to conserve natural communities at the ecosystem scale while accommodating compatible land uses. We believe that these principles are critical to implementing new approaches such as “smart growth” programs on land, and for guiding the management, protection, and sustainable use of resources off the California coast.

Use Marine Protected Areas as a Tool. The Preliminary Report’s recommendations related to marine protected areas (MPAs) are consistent with California policy, specifically the Marine Life Management Act (which employs reference reserves as baselines for fishery management) and the Marine Life Protection Act (which calls for a coherent network of MPAs). The Preliminary Report endorses MPAs as one of many tools for ensuring that ocean policy adheres to sound guiding principles.

The Commission should consider the leadership provided by California in this area in its evaluation of national processes. California has a clear legislative requirement to evaluate, and to create where needed, networks of MPAs. The California Fish and Game Commission has clear authority to designate all types of protected areas – including no-take reserves. There is no similar guidance at the federal level and no clear process for designating no-take reserves in federal waters.

Building Sustainable Fisheries. The findings of the Preliminary Report indicate that fishery management processes can be improved and that major fishery problems are related more to governance than inadequate science. Among the most important of the Commissions recommendations are separating decisions regarding how many fish can be taken from the ocean (so-called “assessment decisions”) from decisions about allocation of the available harvest and other operational issues (“allocation decisions”); shifting management from a species by species approach to a multi-species approach and ultimately an ecosystem based approach; developing regional bycatch reduction plans that address broad ecosystem impacts of bycatch, and; exploring the use of “dedicated access privileges,” such as individual fishing

quotas, community quotas, cooperatives, and territorial or area access programs, consistent with national guidelines to mitigate potential problems that can result from granting such privileges.

The Preliminary Report's section on fisheries does not address innovative approaches for implementing ecosystem-based management that can be found in California processes. California's Marine Life Management Act provides a clear process for implementing ecosystem-based approaches and should be viewed a national model in the final commission report. Similar to our offer regarding the Marine Life Protection Act, we would be happy to work with the Commission to provide more specifics on our authorities and how this process could also serve as a national model.

Reduce Non-Point Source Water Pollution. The Preliminary Report recognizes the importance of reducing sources of polluted stormwater and non-point pollution. The report makes the case regarding the critical impact polluted stormwater and non-point source pollution have on the health of our coastal waters. These represent the largest ocean water quality concerns that we have in California and we concur with the high priority need to address this issue.

For coastal states the Preliminary Report recommends the transfer of the coastal non-point pollution control program currently in the National Oceanic and Atmospheric Administration (NOAA) to the U.S. Environmental Protection Agency (USEPA). We oppose this recommendation at this time because it would significantly weaken our ongoing efforts to effectively address the single most significant source of ocean water pollution. It was precisely because existing USEPA programs alone were not working to effectively address polluted runoff that Congress, in 1990, enacted amendments in connection with the reauthorization of the Coastal Zone Management Act to mandate development and implementation of coastal non-point source pollution control programs by coastal states.

NOAA's program requires coordination and integration of USEPA's water quality protection programs and state coastal management programs dealing with land use. Eliminating the NOAA coastal non-point source pollution control program at this time would take the country back to the days when water quality protection agencies did not talk with coastal zone management agencies dealing with land use issues. We also believe that we should exercise caution regarding the movement of other programs such as the recommendation to move the National Estuary Program from the U.S. Environmental Protection Agency to the National Oceanic and Atmospheric Administration. Our preference is to improve existing programs rather than create new approaches unless problems are identified that make such actions absolutely necessary.

Support Watershed Management. The Preliminary Report provides a strong emphasis on using watershed approaches to help protect, manage and restore coastal and ocean ecosystems. We concur with the need to move toward a watershed approach. As California's ocean strategy recognized in 1997, managing our coastal and inland watersheds is critical for managing our coastal bays, lagoons, and nearshore ocean waters. California has made progress in this area through a variety of partnerships such as the Water Quality Protection Program of the Monterey Bay National Marine Sanctuary, the watershed programs of the Santa Monica Bay Restoration Commission, and a variety of regional watershed approaches, funding strategies, and multi-county efforts to address salmonid conservation planning and recovery.

The California Resources Agency and the California Environmental Protection Agency are working closely together to develop an integrated watershed management grant program, to improve coordination of watershed programs among state agencies, and to work closely with watershed groups, local agencies and other stakeholders to secure funding and implementation of integrated watershed planning, management and monitoring activities.

Another critical component to watershed management is the provision for monitoring. We fully support the recommendations in the Preliminary Report regarding the need for monitoring, and particularly the recommendations for creating an Integrated Ocean Observing System that will help us understand the ocean impact of our efforts to manage water quality within our watersheds.

Preventing the Spread of Invasive Species. The Preliminary Report recognizes the issues surrounding the proliferation of invasive species in many of this nation's coastal waterways and nearshore waters. We agree that the introduction of aquatic invasive species through ballast water discharges has created significant economic, environmental, public health and safety impacts in the United States and around the world. The current National Ballast Water Management Program has failed to achieve the National Invasive Species Act's objective to "prevent the unintentional introduction and dispersal of nonindigenous species into waters of the United States." This has been an issue in California with infestations up and down the coast and within our major ports, and a serious concern with the introduction of *Caulerpa taxifolia* (killer algae) in some small estuarine systems in Southern California. Therefore, we support a strong program at the national level to address invasive species.

Protecting Coastal Wetlands. The Preliminary Report recommends that the Ocean Council coordinate the development of a comprehensive wetlands protection program that is linked to coastal habitat and watershed management efforts, as well as make specific recommendations for the integration of the Clean Water Act Section 404 wetlands permitting process into that broader management approach. We agree with the need for this level of coordination and believe that our Southern California Wetlands Recovery Project (SCWRP) provides a model for establishing a national program. The SCWRP includes relevant federal, state and local agencies and other stakeholders in a process to identify wetland restoration projects, necessary science considerations, and potential funding sources, working together from project identification to project implementation. The program is linked to coastal habitat restoration and protection efforts, watershed management programs, and efforts to manage coastal sediments since they can potentially be used for restoration purposes.

The Preliminary Report can be strengthened by recommending that the federal government, in partnership with the states, establish minimum mapping criteria for wetland mapping to support a national wetland inventory. In addition, states should receive support for implementing regulatory and nonregulatory wetland programs. Unlike other water programs under the Clean Water Act, California and other states have shouldered the entire burden of funding wetland programs that are delegated to or assumed at the state level.

Manage Sediment on a Regional Basis. The Commission's Preliminary Report recommends that coastal sediment management be conducted on a regional basis. It also recognizes that the U.S. Army Corps of Engineers should broaden its criteria for determining the least-cost options to encompass the outcomes of regional sediment planning and management. We concur with

this emphasis on the need to manage coastal sediments on a regional basis, instead of on a case-by-case basis at each lagoon, harbor or beach and to also broaden the criteria for establishing least-cost management options.

California has taken a leadership role in this area by creating the Coastal Sediment Management Workgroup (CSMW) with the U.S. Army Corps of Engineers. This group discusses federal, state and local sediment issues and the projects necessary to resolve them. The CSMW is now working on a "Coastal Sediment Management Master Plan" to identify sediment management issues on a regional basis for the entire California coast. This Master Plan is being used as a pilot for the ongoing development of the National Shoreline Management Study currently underway through the Corps of Engineers. Other sediment management models in California worth consideration are the Dredged Materials Management Office in San Francisco Bay and the Contaminated Sediments Task Force which addresses similar issues for southern California ports.

These types of government partnership approaches to regional sediment management should be considered as national models. The recommendations in the Preliminary Report could be strengthened by adding a discussion of the role of coastal states and local governments in developing a national coastal sediment management strategy for improved assessment, monitoring, research and technology development.